

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

MESHBERGER BROTHERS STONE CORPORATION¹
Employer

and

Case 25-RC-10215

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 103, a/w INTERNATIONAL
UNION OF OPERATING ENGINEERS, AFL-CIO²
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held January 28, 2004, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.³

I. ISSUES

The International Union of Operating Engineers, Local 103, a/w International Union of Operating Engineers, AFL-CIO (the "Petitioner") seeks an election within a unit comprised of all

¹ The Employer's name appears as corrected at hearing.

² The Petitioner's name has been corrected to reflect its full legal name.

³ Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

c. The labor organization involved claims to represent certain employees of the Employer.

d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

full-time and regular part-time heavy equipment operators (including loader operators), quarry workers, fine grind operators, fine grind laborers, and maintenance employees employed by Meshberger Brothers Stone Corporation (the "Employer") at its Portland, Indiana facility. The Petitioner contends that these employees comprise an appropriate bargaining unit. However, the Employer maintains that the only appropriate unit must include all employees within these positions who are employed at all five of its facilities. Thus, the Employer asserts that only an employer-wide unit is appropriate.

In addition, while the Petitioner asserts that the Assistant Plant Manager⁴ at the Portland plant is a supervisor within the meaning of Section 2(11) of the Act, and therefore should be excluded from the unit found appropriate herein, the Employer contends that neither of its two Assistant Plant Managers are statutory supervisors.

II. DECISION

For the reasons discussed in detail below, it is concluded that the employees of the Portland, Indiana facility constitute an appropriate unit for purposes of collective bargaining. It is further concluded that the Assistant Plant Manager of the Portland facility shall be permitted to vote in the election ordered herein, subject to challenge.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time maintenance employees, quarry workers, fine grind operators, fine grind laborers, and heavy equipment operators, including loader-operators, employed by the Employer at its Portland, Indiana, facility; BUT EXCLUDING all mechanics, all asphalt/hot mix plant employees, all laboratory technicians, office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 15 employees for whom no history of collective bargaining exists.

⁴ The Plant Managers and Assistant Plant Managers are also referred to by the parties as Plant Superintendents and Assistant Plant Superintendents.

III. STATEMENT OF FACTS

A. Overview of Operations and Facilities

The Employer has been in existence for over one hundred years, and is engaged in the operation of stone quarries with attendant hot mix asphalt plants. The Employer operates five plants in northeastern Indiana in the towns of Portland, Pleasant Mills, Ridgeville, Fairview, and Linn Grove. At all of the plants limestone is blasted, excavated, crushed and offered for sale to wholesale and retail customers. The stone is utilized primarily in road construction. The Portland facility also maintains a fine grind operation which pulverizes limestone into a composition suitable for use in the glass industry. Although the record is not entirely clear, some if not all of the plants also manufacture asphalt. Employees involved in the manufacture of asphalt are not involved in the instant proceeding, since neither party seeks to add them to a unit of employees involved in the quarry operation. In addition to its quarry and asphalt operations, the Employer's quality control laboratory is located at the Portland plant. The laboratory technicians test aggregate to ensure that it meets customer specifications. The technicians are not involved in the instant proceeding either. With the exception of the Fairview plant which closes between mid-December and March of each year, the plants operate year around.

The distances between plants vary, with distances ranging as close as nine, 14, and 17 miles, to as far away as 33, 44, and 46 miles. The Employer's corporate office is located at Linn Grove, and the furthest plant from the corporate office is 33 miles away. The Portland facility, which is centrally located, is 14 miles to its nearest sister plant, and 30 miles from the furthest plant.

The parties agree that any unit should include the positions of heavy equipment operator (including loader operator), fine grind operator, fine grind laborer, quarry worker, and maintenance employee.⁵ Approximately 14 employees occupy these positions at the Portland Plant, and approximately 49 employees occupy these positions at all five plants. Portland and Pleasant Mills operate two shifts, while employees at the other plants work only one shift whose scheduled hours are 7:00 AM to 4:30 PM, Monday through Friday.

Two witnesses testified at the instant hearing: the Employer's Vice President of Operations and the Portland Plant Manager. According to the Vice President, quarry workers generally earn between \$9.00 and \$13.25 per hour; loader operators between \$10.00 and \$14.25 per hour; fine grind operators, between \$10.00 and \$14.25 per hour; maintenance employees between \$10.00 and \$14.00 or \$15.00 per hour, and mechanics between \$10.00 and \$19.00 or \$20.00 per hour. Entry level wages in most if not all classifications are \$9.00 to \$10.00 per hour. All employees receive a cost-of-living wage increase each year and those employees whose performance is deemed meritorious also receive an end-of-year bonus. The size of the bonus is

⁵ Although initially the parties also agreed upon the inclusion of the Employer's two mechanics in any unit found appropriate herein, the Petitioner later amended its petition to exclude the mechanics.

based both upon the profitability of the Company during the preceding year, as well as the quality of each employee's performance.

The Employer's corporate office houses all personnel files; it also processes payroll and issues employee paychecks. Other administrative functions such as the processing of accounts receivable and payable are also handled at the corporate office. Uniform personnel policies and work rules govern all members of the disputed units, and all prospective unit members receive the same fringe benefits.

B. Supervision

The Employer's Vice President of Operations has overall responsibility for all facets of the five plants' operations, including personnel matters. Like other management personnel, his office is located at the corporate office in Linn Grove. Three Plant Managers (also referred to as Plant Superintendents) report to the Vice President of Operations. The Fairview and Ridgeville Plants are overseen by a single Plant Manager, as are the Linn Grove and Pleasant Mills plants. The Portland plant is overseen by a Plant Manager whom the parties stipulated is a supervisor within the meaning of Section 2(11) of the Act.⁶ Two plants also have Assistant Plant Managers: Portland and Linn Grove/Pleasant Mills, and their unit placement is a subject of dispute.

The Plant Managers, who are salaried employees, report to the Vice President of Operations. In addition to the oversight of personnel matters, the Vice President also participates in the purchase of plant equipment; oversees construction projects performed by outside contractors; and performs limited marketing functions. According to the Vice President, he visits most, if not all plants on a weekly basis. He generally spends a few hours at each facility during each visit, overseeing on-going operations and/or checking the status of construction projects. He visits the Portland facility two to three times a week, generally spending one to three hours each visit. According to the Vice President, he speaks with management and employees when visiting all sites. There is no evidence regarding the frequency or duration of his visits to Ridgeville and Fairview, which are the two smallest facilities.

The description of the duties and authority of the three Plant Managers provided by the Vice President and the Portland Plant Manager are substantially consistent and reflect substantial autonomy on the part of each Plant Manager. Plant Managers are in charge of the day-to-day operations of each quarry and are the highest ranking member of management on site. When a vacancy occurs or additional staff at a quarry is needed, hiring authorization is secured from the Vice President. The Managers then advertise the vacancy; interview candidates; and select the individual for hire. The Managers relay their selection to the Vice President, and there is no evidence that he has vetoed any Manager's hiring recommendation. New hires are trained either by their Plant Manager, or a person to whom the Manager has delegated training duties. Since at least early 2003, notices of vacant positions have been posted at the facilities, permitting internal

⁶ This finding is based upon the parties' stipulation that at a minimum, the Portland Plant Manager exercises independent judgment in approving or disapproving employee vacation requests, approving overtime work, issuing work assignments and issuing discipline.

applicants an opportunity to apply before the vacancies are advertised to outside applicants. Like the hiring process, the Plant Managers interview the internal applicants and forward their selection to the Vice President. A maintenance position became available at the Portland facility in April of 2003. The Portland Manager, after posting the notice at his facility and faxing copies to the other facilities, interviewed two employees interested in the position and selected one of the applicants for the position. The Vice President agreed with the Manager's selection and approved of the employee's promotion. Two months after the maintenance position became available, a second shift fine grind position became available at the Portland facility. The Portland Manager interviewed and recommended that an outside applicant be hired for the position. The Vice President also agreed with this recommendation and the outside applicant was hired.

Plant Managers schedule production at each facility, and the work of their subordinates. Plant Managers possess the authority to issue verbal and written warnings without prior authorization from the Vice President. In respect to terminations, the Managers make recommendations to the Vice President. The Vice President adopts their recommendations with rare exception. The Portland facility faced two disciplinary situations in 2003. In one situation, two employees engaged in a heated argument. The Portland Manager and his Assistant recommended that one of the employees be sent to anger management counseling, and the Vice President of Operations concurred with this recommendation. According to the Vice President, he spoke with the affected employee at some point, but he was uncertain whether it was before or after the decision had been made to require that the employee attend counseling. In the other situation, the Portland Manager and Assistant Manager recommended that an employee be suspended without pay for three days, and the Vice President also approved this recommendation. Approximately two to three years ago, the Portland Manager recommended that two employees be fired due to drug and/or alcohol use, and the Vice President also concurred with this recommendation.

Plant Managers can authorize employee absences of short durations without prior authorization from the Vice President, and can excuse employee absences. Plant Managers conduct employee evaluations, which are used to determine if probationary workers are retained, and to determine the size, if any, of merit increases awarded to employees at the end of each year. In the case of Portland, Linn Grove and Pleasant Mills, the Assistant Plant Managers participate in the evaluation process. Recommendations regarding raises are forwarded to the Vice President who makes the final decision regarding the amount of each employee's raise. Plant Managers also make recommendations to the Vice President when they deem overtime work necessary, and according to the Vice President, he concurs with their recommendations.

As mentioned previously, there are Assistant Managers at Portland and Linn Grove/Pleasant Mills. The Assistant Managers are hourly paid and earn \$1.00 more per hour than other quarry workers.⁷ They substitute in the absence of other quarry workers as well as in the absence of the Plant Manager. In conjunction with their Plant Managers, they develop the

⁷ Although the record is clear that the Assistant Plant Managers earn \$1.00 more than certain other employees, which classifications these other employees occupy is not clear.

work schedules for their respective plants, and oversee the work of other employees. They also participate in the evaluation of employees. The Assistant Manager's disciplinary authority is limited to the issuance of verbal or written warnings for attendance-related matters. Disciplinary action that is more severe must be brought to the attention of the Plant Manager or the Vice President of Operations. Assistants can approve overtime, but only after conferring with their Manager.

C. Job Functions and Integration

Two job classifications exist at all plants, while three additional classifications exist at Portland. Quarry workers and loader operators work at each plant and are directly supervised by their respective Plant Managers. While certain maintenance employees are assigned to service various plants, two maintenance employees are employed exclusively at the Portland facility. In addition, fine grind operators and fine grind laborers staff the fine grind crushing operation of the Portland plant, and these employees, too, are directly supervised by the Portland Plant Manager. Quarry workers and loader operators at each facility perform substantially similar functions. Quarry workers operate heavy equipment such as dump trucks and front loaders; operate crushing and screening equipment; and perform routine minor maintenance on this equipment. They also perform some laborers' work such as general clean up and shoveling. As their name connotes, the primary function of loader operators is to load dump trucks with aggregate using front-end loaders. They may also perform some manual labor. Maintenance employees operate heavy equipment such as cherry pickers, cranes, bobcats and trucks, and perform maintenance and minor repairs to conveyors, bucket elevators, crushers and other equipment. This often involves welding and fabricating parts. The fine grind operators operate the fine grind plant which includes a drying as well as a crushing process. They also load trucks and rail cars with finished product and perform minor maintenance on the equipment they operate. The fine grind laborers perform similar functions.

Two mechanics repair and maintain plant and equipment at all facilities. The mechanics report directly to the Vice President of Operations and generally perform major repairs in contrast to the routine maintenance and minor repairs performed by maintenance employees. The Employer employs at least one dump truck driver who delivers aggregate to customer sites and who occasionally transports aggregate between plants. In addition, the Portland plant houses the Employer's laboratory whose technicians test aggregate to ensure that it comports with customer specifications. The Petitioner does not seek to include these three groups of employees into the petitioned unit.

A document generated from the Employer's 2003 payroll records indicates that employees who occupy unit classifications at facilities other than Portland worked approximately 1,486 hours at the Portland facility during that year. It appears, however, that 42% of these hours were attributable to the performance of one function which reoccurs at the Portland plant only once a year, and which provides visiting workers with minimal contact with Portland employees. During the winter months the two employees of the Fairview plant (which is closed for the winter) in conjunction with employees from the Ridgeville plant, clean out the sludge pond located at the Portland site. Debris from classifying sand accumulates in this pond throughout the construction season, and removing this sludge from the pond is necessary so that

the water can be reused to wash aggregate during the next construction season. Employer records show that four employees from Ridgeville and two from Fairview worked a total of 761 hours at Portland during the weeks ending January 4th through February 1, 2003.⁸ Cleaning the pond involves removing sludge from the pond with front loaders; loading the sludge into dump trucks; and removing the material from the facility. Record evidence fails to reflect the extent, if any, to which sludge removal involves contact with Portland employees. To the contrary, the record suggests that the visiting employees have contact with Portland employees primarily on days when weather is too inclement to clean out the pond, and the employees then work in the Portland maintenance shop.

In addition, the two mechanics worked approximately 1,814 hours at Portland during 2003. As mentioned previously, the mechanics perform work at all of the plants. It is not known, however, how the number of hours they spent at Portland in 2003 compares with the number of hours they spent working at each of the other four plants. Another document generated from the Employer's 2003 payroll indicates that members of the petitioned unit at Portland worked only approximately 13 hours at other plants. This is consistent with the testimony of the Portland Manager who indicated that in 2003 Portland employees rarely worked at other facilities. He further indicated that this has been the case from year to year. According to the Portland Manager, his plant is the Employer's highest production facility and there is enough work there to keep all of its employees occupied throughout the year. Therefore, Portland employees typically do not perform work at other plants.⁹

One employee has permanently transferred to the Portland Plant from another facility during the past five years, and there is no record of any employee having transferred on a permanent basis from Portland to another facility during this time period.

According to the Vice President, maintenance employees use radios to communicate with facilities other than their own. However, maintenance employees at the Portland facility do not possess radios.

The Employer conducts a two-day a mandatory safety training meeting once each year, and last year it was conducted at the Portland municipal library. Employees from all facilities attend either the first or second day of the safety training session. Of the approximately fifteen employees in the petitioned unit, all but one attended the second day of the training session in 2003. This is the only company-wide meeting conducted each year at which employees from the various plants may come into contact with one another. The Company also sponsors an annual Christmas party to which all employees are invited. Attendance, however, is not mandatory.

⁸ During these weeks employee Morris Hamilton worked 141 hours; Gayle Brown, 149 hours; Marc Garringer, 114 hours; and Michael Seyler, 158 hours. These employees are from the Ridgeville plant, while employees Kevin Franks, who worked 95 hours, and Vernon Horner, who worked 104 hours, came from Fairview.,

⁹ According to the Portland Manager, he has worked for the Employer 15 years, and has served as Manager of the Portland plant for the past six or seven years.

Other "toolbox" and safety meetings are conducted separately at each facility by a staff member who travels among the plants.

D. Product Integration

Each facility operates autonomously and produces substantially the same products (with the exception of the fine grind). In response to the hearing officer's question, the Vice President testified that product movement only occurs when laboratory technicians take samples of aggregate from the plants for testing at the laboratory at the Portland facility. Later, when questioned by his counsel, he stated that occasionally when one facility does not have a certain product, it will be shipped from another facility. The Portland Manager stated that products from the Portland plant are rarely commingled or transferred to other facilities.

IV. DISCUSSION

A. Unit Scope

The Petitioner seeks a unit comprised of all full and regular part-time quarry workers, loader operators, fine grind operators, fine grind laborers, and maintenance employees employed at the Portland facility. The Employer asserts that only a unit which includes all five of its facilities is appropriate.

The Board has consistently held that a single facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity, Cargill, Incorporated, 336 NLRB 1114 (2001); New Britain Transportation Co., 330 NLRB 397 (1999); Centurion Auto Transport, 329 NLRB 394 (1999); Kendall Co., 184 NLRB 847 (1970). To determine whether the presumption has been rebutted, the Board examines such factors as the extent of centralized control over labor relations and daily operations; whether local management possesses substantial autonomy; the extent of employee interchange; the similarity of employee skills and functions; the geographic distance between plants; and the presence or absence of a bargaining history, New Britain Transportation Co., 330 NLRB 397 (1999); Esco Corp., 298 NLRB 837 (1990). The party opposing the single-facility presumption has the burden of presenting sufficient evidence to rebut the presumption, J&L Plate, Inc., 310 NLRB 429 (1993). In the case at hand, it is concluded that the evidence fails to rebut the presumption of the appropriateness of the single-facility unit.

Administrative and labor relations functions for all plants are centralized at the corporate office. Common personnel policies, work rules, and certain terms and conditions of employment govern all employees. Each Plant Manager, however, possesses substantial local autonomy over labor relations. Thus, the local Managers effectively recommend the hire, discipline, termination, and promotion of their employees, *See* Bowie Hall Trucking, 290 NLRB 41, 43 (1988) (sufficient local autonomy existed where a local terminal manager conducted the initial screening of employment applicants). Plant Managers establish production schedules for their

facilities, assign work to their employees, and supervise the completion of that work. They either directly approve leave-of-absence requests, or effectively recommend action on such requests to the operational Vice President. Managers effectively recommend employees for promotion and permanent transfer between facilities. They annually evaluate the work performance of their employees and their appraisals affect the size of year-end bonuses awarded employees. Thus, Plant Managers possess substantial independence in the oversight of their facilities and staff. The Board does not require that an Employer clothe a supervisor with *ultimate* authority, Bowie Hall Trucking, Id. Instead, Board law analyzes the degree to which the authority is *substantial* or *significant* when determining the sufficiency of local management's authority. It is clear that the Vice President has ultimate authority in several personnel areas, but the individual Plant Managers have significant authority, and, at least in the case of the Portland Manager, are not a mere conduit for decisions made by the Vice President. Thus, centralized administration and uniformly applied employee policies are insufficient to overcome other evidence which indicates that there exists sufficient local autonomy to support the single location presumption, *See Rental Uniform Service*, 330 NLRB 334 (1999); *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999).

Neither are the plants functionally integrated in respect to the products they produce. Each facility produces aggregate, fine grind and asphalt which is not dependent upon or related to the other plants. Functional integration in other respects is unclear. Thus, some mobile equipment is transferred among the plants, but the extent of such equipment sharing is not known.

It is undisputed that certain job classifications and functions are similar throughout all facilities. Quarry workers, loader operators, and maintenance employees perform similar, if not identical, duties at all facilities. The Portland employees, however, do perform some functions nonexistent at other facilities. Two job classifications (fine grind operators and laborers) with distinctive duties and functions, exist only at Portland. The two maintenance employees at Portland also perform functions not performed elsewhere since they maintain and repair the equipment related to the fine grind process.

In respect to interchange between Portland employees and those of other plants, the evidence is inconclusive. First, the Employer produced records of interchange for only one year, and it is not known how representative year 2003 is of other years. Second, the 2003 data lacks context, and it is therefore difficult to draw conclusions from the figures. The data shows that throughout 2003 Portland employees spent only 13 hours working at other plants. While the record shows that quarry employees from other plants spent 1,486 hours working at Portland, it appears that 42% (761 hours) of this time was spent in sludge removal, a function which the record does not indicate involves much contact with Portland's workforce. In addition, a comparison of the total number of hours other-facility employees worked at Portland, to the number of hours Portland employees themselves worked, shows that "foreign" employees worked only 5% - 11% of the total Portland hours.¹⁰ Thus, without a meaningful context in

¹⁰ Using an average 40-hour workweek at 50 weeks per year, the 15 employees at Portland worked 30,000 hours during 2003. The 1,814 hours worked by outside mechanics represents 6%

which to evaluate the 2003 data, it cannot be concluded that the number of hours employees from other plants worked at Portland is substantial, *See New Britain Transportation Co., Supra* at 397 (where 200 instances of interchange in a five-month period between a unit of 35-38 employees and two other groups totaling 155 employees, not found "substantial" because the figure lacked context).

The record is clear, however, that the number of permanent transfers to and from Portland in the past five years is almost nonexistent. No transfers out of Portland occurred during this period, and only one permanent transfer to Portland occurred.

Evidence of other opportunities for employees to share contact with one another is also minimal. The record reflects only two such opportunities: the annual Christmas party and one day per year of joint training. Thus, the evidence of interchange and employee contact is insufficient to support a conclusion that the identity of the Portland facility has become so merged with the other four plants, that it has lost its separate identity.

The distance between the facilities also militates against a multi-facility unit. The shortest distance between two plants is 9 miles, while the longest distance is 46 miles, *Cargill, Incorporated, Supra; New Britain Transportation Co., Supra*.

The unit desired by a labor organization is also a relevant consideration, and a union is not required to seek representation in the most comprehensive grouping of employees unless its petitioned unit is found to be inappropriate for collective bargaining, *Overnite Transportation Co., 332 NLRB 723 (1996)*.

It is therefore concluded that the preponderance of record evidence fails to rebut the presumptive appropriateness of a bargaining unit limited to the quarry employees employed at the Portland plant.

B. The Status of Assistant Plant Managers

Assistant Plant Managers earn an hourly wage substantially higher than other employees; jointly develop work schedules and conduct employee evaluations with their Plant Managers. They also oversee the work of other employees and substitute for the Plant Manager in his absence. While there is some evidence that Assistant Managers may possess the power to issue verbal or written reprimands for attendance-related matters, it is unclear whether they may do so without prior authorization from a superior. In sum, the evidence of record is insufficient from which to make reasoned findings of fact and conclusions concerning the proper placement of Assistant Plant Managers. Since only one such position exists at the Portland plant, in order to effectuate the purposes of the Act through expeditiously providing for a representation election, the Assist Plant Manager of the Portland plant shall be allowed to vote subject to challenge, and his eligibility to vote shall be ultimately determined, if necessary, in post-election proceedings.

of these total hours Portland's own employees worked, while the 1,486 hours worked by other facility employees, represents only 5% of total Portland hours.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Union of Operating Engineers, Local 103, a/w International Union of Operating Engineers, AFL-CIO.

VI. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and

addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, **on or before February 20, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by February 27, 2004.

SIGNED at Indianapolis, Indiana, this 13th day of February 2004.

/S/ Roberto G. Chavarry

Roberto G. Chavarry
Regional Director
National Labor Relations Board
Region Twenty-five
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, Indiana 46204-1577

RL/fr/ar

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